

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 332 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

D.D.VASAVA

Versus

DY DIST DEVPT OFFICER(REVENUE)

Appearance:

MR PS PATEL for Petitioner

MR HM BHAGAT for Respondent (absent)

CORAM : MR.JUSTICE S.M.SONI

Date of decision: 25/04/96

ORAL JUDGEMENT

Petitioner, Talati-cum-Mantri, was removed from service after enquiry by an order dated 8.11.76. When the said order of removal came to be challenged, this court (Coram:N.H. Bhatt J.) set aside that order. However, it was observed that said judgment will not be a bar to initiate fresh proceedings on the very charges , if the disciplinary authority so deems fit. In view of this observation, a fresh proceedings was initiated and

the petitioner was held guilty of the charges levelled against him and the punishment of withholding of two increments with future effect was passed and the petitioner was reinstated in service. The petitioner was initially suspended and then in view of the second order, after imposing punishment of withholding two increments with future effect, came to be reinstated. Question before the Department was whether the period of suspension should be treated as such or on duty. Said question was resolved by the Department by adjusting that period against the available leave of the petitioner. Said order of 3.8.81 and order dated 2.3.82, a consequential order thereof, are under challenge in this petition.

Though the respondent is duly served, he has not chosen to remain present before the court. I, therefore, myself have gone through the papers personally.

Short question before the court is whether the order of the Department in treating the period of suspension as on leave is a just order or not. Learned Advocate for the petitioner has shown to this court a circular of the Government dated 13.4.70, whereby the original circular of the Government, being General Administration Department (Confidential) No.CDR-1963-C dated 6.4.65 is amended. Clause 3 of the amended circular reads as under:-

"3. Where the order of dismissal/removal from service is set aside by the court of law on any grounds, the entire period from the date of dismissal/removal or from the date of suspension, if suspension had preceded dismissal/removal to the date of reinstatement in service should be treated as 'Duty' for all purposes"

In view of this clause 3, it is contended that instead of treating the suspension period on leave, it should have been treated as on duty.

Petitioner is in the Panchayat service. Whether this circular or the earlier one is applicable to the petitioner or not is a question to be decided first and, if applicable, whether it was brought to the notice of the Department which treated the suspension period as on leave is a question of fact. As the Department has considered the case of the petitioner in ignorance of this circular, it will be in the fitness of the matter to remand the matter back to the Department, which shall decide the matter in accordance with the circular, if the department is of the view that the circular is applicable

to the services of the petitioner.

In the result, the petition is allowed. The order of treating the suspension period as leave period is set aside. The matter is remanded back to the respondent who shall decide afresh whether the period of suspension of the petitioner till his reinstatement should be treated as such or on duty in the light of the above circular. It is hoped that the respondent will decide the same within three months of the receipt of the writ of this court. Rule made absolute. No costs.
